



STAFF REPORT

TOWN COUNCIL MEETING OF AUGUST 9, 2016

To: Town Council

From: Crickett Strock, Town Clerk

Subject: Revised/Update Harassment Policy and Procedure

Date: July 27, 2016

RECOMMENDATION:

Approve Resolution amending the Town's harassment policy and changing the title to Harassment, Discrimination, and Retaliation Prevention Policy.

DISCUSSION:

On January 12, 2015 Council approved Resolution 15-16, directing staff to give all Administrative Policies and Procedures a cursory review each July. In reviewing the policies staff found that the Harassment Policy needed to be amended to reflect the new California Fair Employment Housing Act (FEHA) regulations.

FEHA requires all employers to develop and implement a policy for preventing harassment, discrimination, and retaliation, with a procedure for employees to make complaints and for the employer to investigate complaints. The Town's current Policy must be amended to reflect the following FEHA requirements: list all protected groups under the FEHA; allow employees to report to someone other than a direct supervisor; state that all complaints will be followed by a fair, complete and timely investigation; state that the employer will maintain confidentiality to the extent possible; state that remedial action will be taken if any misconduct is found; state that employees will not be retaliated against for complaining or participating in an investigation; and state that supervisors, co-workers, and third-parties are prohibited from engaging in unlawful behavior under FEHA.

Attached is the policy showing the amendments in red for your review and approval.

CEQA

The proposed Policy does not meet the definition of a project under CEQA because it is an administrative activity that will not result in direct or indirect physical changes in the environment.

FINANCIAL IMPLICATIONS:

There are no financial issues with this item.

Attachments:

- Resolution approving policy
- Proposed Harassment, Discrimination, and Retaliation Prevention Policy

TOWN OF LOOMIS

RESOLUTION NO. 16 -

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS APPROVING AMENDMENTS TO THE HARASSMENT POLICY AND CHANGING THE TITLE TO HARASSMENT, DISCRIMINATION, AND RETALIATION PREVENTION POLICY

WHEREAS, Council directed staff to annually review the Town Administrative Policies and Procedures and to make amendments as needed; and

WHEREAS, in the process of reviewing the policies staff found that the Harassment Policy needed to be amended to reflect the new California Fair Employment Housing Act (FEHA) regulations; and

WHEREAS, this Council desires that employees of the Town shall work in an environment free of harassment of any kind based on race, religious creed, color, national origin, age, ancestry, physical and/or mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation and military and/or veteran status; and

WHEREAS, the purpose of this policy is to establish a strong commitment to prohibit and prevent harassment, discrimination, and retaliation in the workplace, and to set forth a procedure for investigating and resolving complaints of harassment, discrimination, and retaliation.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Loomis that the Amended Harassment, Discrimination, and Retaliation Prevention Policy (Exhibit A) is hereby adopted.

PASSED AND ADOPTED this 9th day of August, 2016 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Mayor

ATTEST:

Town Clerk



EXHIBIT A

TOWN OF LOOMIS

ADMINISTRATIVE POLICIES AND PROCEDURES

HARASSMENT, DISCRIMINATION, AND RETALIATION PREVENTION POLICY

Effective Date: 5/11/1993

Resolution:

PURPOSE

~~The purpose of this policy is to establish a strong commitment to prohibit any kind of harassment in employment with the Town of Loomis.~~ The purpose of this policy is to establish a strong commitment to prohibit and prevent harassment, discrimination, and retaliation in the workplace, and to set forth a procedure for investigating and resolving complaints of harassment, discrimination, and retaliation.

POLICY

Harassment, **discrimination, and retaliation** of an applicant or employee by a supervisor, management employee, or co-worker on the basis of race, religion, color, national origin, ancestry, handicap, disability, medical condition, marital status, sex, age, **genetic information/characteristics, gender, gender identity, gender expression, sexual orientation, military and/or veteran status** will not be tolerated. This policy applies to all terms and conditions of employment including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training.

Supervisors, co-workers, and third-parties are prohibited from engaging in unlawful behavior under the Fair Employment and Housing Act (FEHA). Disciplinary action up to and including termination will be instituted for behavior **and misconduct** described in the definition of harassment **and discrimination** set forth below.

Any retaliation against a person for filing a harassment charge, or making a harassment complaint, **or participating in an investigation** is prohibited. Employee(s) found to be retaliating against another employee shall be subject to disciplinary action up to and including termination.

DEFINITION

A. Adverse Conduct

Discussing or spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. This includes individuals who make good-faith reports of harassment or discrimination and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process.

B. Discrimination

Basing an employment decision on one's protected classification; treating an applicant or employee differently with regard to any aspect of employment because of his or her protected classification; engaging in harassment.

C. Harassment includes, but is not limited to:

1. Verbal Harassment

For example, epithets, derogatory comments or slurs on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, medical condition, marital status, sex, age, **or gender**. This might include inappropriate sex oriented comments on appearance, including dress or physical features or race oriented stories.

2. Physical Harassment

For example, assault, impeding or blocking movement when directed at an individual on the basis of race, religion, color, national origin, ancestry, handicap, disability, medical condition, marital status, age, sex, **or**

gender. This could be conduct in the form of pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.

3. Quid Pro Quo

Quid Pro Quo harassment occurs when a supervisor makes demands of a sexual nature to a subordinate. ("Quid Pro Quo" means "this for that.") Quid Pro Quo is when a supervisor makes submission to sexual conduct, a term or condition of employment, and uses it as a basis for employment decisions that affects subordinates. Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

4. Unwelcome Sexual Favors Conduct

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature which is conditioned upon an employment benefit, unreasonably interferes with an individuals' work performance or creates an offensive work environment. **Sexual harassment can also occur between employees of the same sex.**

5. Visual Forms of Harassment

For example, derogatory posters, notices, bulletins, cartoons, or drawings on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, medical conditions, marital status, sex, age, **or gender.**

D. Hostile Work Environment

A hostile work environment is created when an employee feels uncomfortable or scared to be in his or her work space due to offensive behavior, intimidation or abuse by a coworker or superior.

E. Protected Classifications

Include race, religion, color, national origin, ancestry, physical or mental disability, medical condition, genetic characteristics, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, military or veteran status, age, and other status protected from workplace harassment or discrimination by state or federal law.

F. Retaliation.

Any adverse conduct taken because an individual has reported harassment or discrimination or has participated in the complaint or investigation process described herein.

RESPONSIBILITY

Each employee is responsible to insure that his or her conduct or actions do not violate the law or this policy, or actively or passively condone any form of harassment. Any employee who feels this policy has been violated is requested to make appropriate notification following the complaint procedure set forth below.

COMPLAINT PROCEDURE

A. An employee who believes he or she has been harassed, **discriminated against, or retaliated against** should contact either of the following and make an oral or written complaint:

1. Immediate supervisor; or
2. Town Manager or designee

There is no need to follow the chain of command. Such a complaint may be reported at any time, but preferably within 30 calendar days of the last incident of the alleged conduct. If the complaint is made orally, a written and signed statement of the complaint must be submitted by the complaining employee within five (5) business days of the initial report so an investigation can proceed into the matter. Supervisors shall report all complaints to the Town

Manager or designee. The complaint will be followed by a fair, complete and timely investigation. It is the intent of this process however, that an attempt be made to resolve any complaint at the lowest level possible. Any complaint filed ~~is confidential~~ will maintain confidentiality to the extent possible.

An individual has the option to report harassment, discrimination, or retaliation to the California Department of Fair Employment and Housing (DFEH). This administrative agency offers alternate legal remedies and a complaint process. There are time limits for filing complaints with this agency. Contact information: 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758; 800-884-1684.

B. Within five (5) business days after receipt of the written complaint, the Town Manager, Supervisor, or designee will contact the person who allegedly engaged in the harassment, and inform him or her of the basis of the complaint and the opportunity to respond. That person will have seven (7) business days to respond to the complaint. The investigation may also include interviews with the complainant and other persons the investigator has reason to believe has relevant knowledge concerning the complaint.

C. Within five (5) business days after receipt of the response, the Town Manager, supervisor, or designee will determine whether harassment has occurred by reviewing factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination, or retaliation; giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct and the context in which the alleged incidents occurred. Both parties will be notified in writing of the decision.

D. If it is determined that harassment has occurred, appropriate disciplinary action up to and including discharge will be taken. The severity of the discipline will be determined by the severity and/or frequency of the offense.

~~E. An employee's failure to report the occurrence of harassment within fourteen (14) calendar days will be deemed a waiver of any Town action. Failure to file a written complaint within five (5) business days of the initial report will be considered a withdrawal of that report.~~ If the person, against whom the complaint of harassment is filed, fails to respond to the complaint within seven (7) business days of notifications, the complaint will be taken as true, and the appropriate disciplinary measure will be taken.

This policy also applies to elected officials as well as Commission/Committee members appointed by the Town Council.

TOWN OF LOOMIS

RECEIPT OF

HARASSMENT, DISCRIMINATION, AND RETALIATION PREVENTION POLICY

Please read the policy carefully to ensure that you understand the policy before signing this document.

I certify that I have received a copy of the Town of Loomis's "Harassment, Discrimination, and Retaliation Prevention Policy". I understand that it is my responsibility to read and comprehend this policy. I have read and understand the content, requirements, and expectations of the Policy and I agree to abide by the policy guidelines. I understand that if at any time I have questions regarding the Policy, I will consult with my immediate supervisor or the Town Manager or designee.

I agree to observe and follow the "Harassment, Discrimination, and Retaliation Prevention Policy". I understand that failure to abide by the policy could result in the loss of computer, e-mail and internet privileges and/or other disciplinary actions, including discharge from employment.

Employee Name (signature)

Date

Employee Name (please print)